

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR CHERRY STREET TOWNHOMES**

THIS DECLARATION, made and executed by Cherry Street, LLC, a Tennessee limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

Instrument: 2005092300346
 Book and Page: GI 7687 958
 Data Processing F \$2.00
 Misc Recording Fe \$80.00
 Total Fees: \$82.00
 User: TFREUDENBERG
 Date: 23-SEP-2005
 Time: 03:51:26 P

WHEREAS, Declarant is the owner of the Property; and

WHEREAS, the use, appearance, and maintenance of the Property are of mutual interest and concern to the Declarant and to all Owners of Lots in the Property; and

WHEREAS, Declarant desires for the Property to be subject to all terms, covenants, conditions, restrictions and easements set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value, desirability, function and attractiveness of the Property. The covenants, conditions, restrictions and easements shall run with the land and be binding on all parties holding or acquiring any right, title or interest in the Property, or any part thereof, whether or not so expressed in any deed or other conveyance, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Capitalized terms not otherwise defined herein have the following meanings:

"Architectural Committee" shall mean a committee of the Association established to review proposed Improvements and take other actions as provided in Article III hereof. It shall be composed of one (1) or more individuals selected by Declarant for so long as Declarant owns a Lot, and by three (3) or more individuals (all of whom must be Owners) selected by the Association after Declarant has conveyed all Lots. It may adopt or promulgate any rule or regulation, conduct any review or investigation, make any findings, grant or withhold any approval, authorization or permission, and take any other action reasonably necessary or desirable to enforce or carry out the terms and intentions of this Declaration. A vote of at least fifty-one percent (51%) of its members shall be necessary for a decision.

"Association" shall mean and refer to Cherry Street Townhomes Association, a Tennessee nonprofit corporation, its successors and assigns.

"Improvements" shall mean all buildings, walkways, fences, pavement, utility lines or services, attached or detached signs, walls, sidewalks, antennae, satellite dishes, greenhouses, pools, plantings, landscaping, and other structures or improvements of any kind built or placed on the Property. Each Owner shall pay for the construction of all Improvements to his Lot except (i) for traffic signs and other signs of general benefit to the Association, which shall be paid by the Association, and (ii) those Improvements that the Declarant agrees to provide pursuant to a written agreement entered into by and between Declarant and an Owner. It is intended that the Improvements reasonably meant for the exclusive use and enjoyment of the Owner of a particular Lot will lie entirely within said Lot. In the

File
 Prepared By: *Shumaker Witt Gaither & Whitaker*
 1100 SunTrust Bank Bldg
 736 Market St
 Chattanooga, TN 37402

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event that, by reason of unintentional construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lies outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

"Lot" shall mean and refer to one of the areas of real estate within the Property shown as a lot on the Plat. Ownership of a Lot shall impose membership in the Association, which shall not be separable from ownership of a Lot. No Lot other than Lots owned by the Declarant may be subdivided without the written approval of all Owners.

"Majority In Interest" shall mean the affirmative vote of more than fifty percent (50%) of members of the Association having a right to vote.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

"Plat" shall mean the subdivision plat of Cherry Street Townhomes attached hereto as Exhibit A, and all amendments to that subdivision plat.

"Property" shall mean and refer to that certain real property described in Exhibit B attached hereto and made a part hereof.

ARTICLE II

COVENANTS FOR ASSESSMENTS

2.1 Creation of the Lien and Obligation of Assessments. The Owners, for each Lot owned within the Property, hereby covenant and agree to pay to the Association, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association, (i) regular assessments or charges, to be collected either monthly, quarterly or annually, and (ii) special assessments for capital improvements or other purposes, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with interest, costs and reasonable attorney's fees, if delinquent, shall be a charge and a continuing lien upon the Lot against which the assessment is made.

2.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the benefit, improvement and maintenance of the Property as provided herein.

2.3 Regular Assessments. The Association shall fix the regular assessment at an amount sufficient to provide funding for the usual and normal obligations of the Association and for other uses specified herein. The regular assessment for each calendar year, and the basis for payment thereof, shall be determined by the Association at a meeting of the Association for which written notice has been given to all Owners at least ten (10) days in advance of the meeting but not more than thirty (30) days in advance of the meeting. The regular assessment may be increased or decreased during the year.

2.4 Special Assessments. In addition to the regular assessments, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any other construction, reconstruction or unexpected repair or replacement of Improvements on a Lot that are reasonably needed by or benefiting other Lots, including fixtures and personal property, which may be incurred, provided that any such assessment shall be approved by sixty-seven percent (67%) of the votes of members of the

Association who are entitled to vote at a meeting duly called for that purpose. Any assessment for the purpose of adding new Improvements (not including replacement of existing Improvements) shall require approval of at least ninety percent (90%) of the votes of members of the Association who are entitled to vote at a meeting duly called for that purpose. A meeting of members of the Association to consider a special assessment is duly called when written notice of the meeting setting forth the purpose of the meeting is sent to all Owners not less than ten (10) days nor more than thirty (30) days in advance of the meeting.

2.5 Share of Assessments. Unless otherwise specified in this Declaration, each Lot shall be liable for one-fourteenth (1/14th) of all regular and special assessments.

2.6 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment that is not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the maximum amount permitted by law, and the Association shall furnish notice to the delinquent Owner of the existence, amount and cause of the delinquency. If the delinquency has not been cured within the notice and cure period set forth in Section 9.2 below, the Association may foreclose the lien against the Lot owned by the delinquent Owner in the manner provided by law for the foreclosure of a Deed of Trust. The Owner of a Lot on which there are delinquent assessments shall not be permitted to participate or to vote at any meeting of the Association.

2.7 Subordination of Liens to Mortgages. The lien of the assessments for which provision is herein made, as well as in any other Section of this Declaration, shall be subordinate only to the lien of any bona fide mortgage to an institutional mortgagee unaffiliated with the Owner. Such subordination shall apply only to the assessments that have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or other proceeding in lieu of foreclosure of such mortgage.

ARTICLE III

ARCHITECTURAL CONTROL

3.1 Intention. It is the intention of the Declarant for all Improvements on the Property be compatible in exterior appearance, exterior materials, architectural style and detail and other aspects; to be in compliance with applicable zoning on the Property; and to be maintained in a first-class manner at all times.

3.2 Improvements. The Declarant may erect, install, maintain, alter or replace any Improvements to any Lot to which the Declarant holds title and to any area of the Property encumbered by the easements described in Article VI hereof for so long as Declarant holds title to a Lot. Thereafter, no Improvement of any nature, kind or description, shall be commenced, erected, installed, maintained, altered or replaced upon the Property, nor shall any exterior addition to, or change or alteration in, any Improvements or the appearance of the exterior of any Improvements be made, until detailed plans and specifications showing the nature, kind, shape, height, materials, location, appearance and such other details as the Architectural Committee may require, shall have been submitted to and approved in writing by the Architectural Committee.

ARTICLE IV

MAINTENANCE

4.1 Association. The Association shall have the exclusive obligation to provide for the maintenance, repair, upkeep and replacement of all fences, gates, lawns, landscaping, underground drainage and retention, drives, areas of ingress and egress, other areas of common usage, signs for common usage, sprinklers, outdoor trash containers and such other items or Improvements as may be determined by the Association.

4.2 Owners. Each Owner shall be responsible for the interior and exterior maintenance of the Improvements on its Lot, specifically including sidewalks on each Owner's Lot and all other items not maintained by the Association under Section 4.1 hereof, in accordance with reasonable standards imposed by the Association through the Architectural Committee.

4.3 Default. In the event an Owner of any Lot shall fail to comply with Section 4.2 hereof, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Improvements to a proper condition. The cost of such work shall be added to and become part of the assessment applicable to that Lot.

4.4 Construction. During the construction or repair of any Improvements by an Owner, the Owner shall maintain the appearance of the Lot in a reasonably satisfactory manner, and shall prevent temporary or permanent damage to other Lots, or inconvenience to other Owners, or their tenants, guests, invitees, agents and employees. The Association may adopt reasonable rules and regulations during periods of construction relating to traffic, traffic routes, debris, noise and other matters. An Owner shall have the obligation to ensure that any construction on its Lot shall be in compliance with such rules and regulations, and shall be liable for damages resulting from the failure to comply therewith.

ARTICLE V

OBLIGATIONS

5.1 Obligations Which Are Covenants. Each Owner, and each Owners' heirs, successors and assigns, shall have the following obligations, which shall be covenants running with the land:

(a) the obligation to use the Owner's Lot in accordance with this Declaration and applicable zoning;

(b) the obligation to use the Owner's Lot exclusively for residential purposes and to allow the Improvements to the Lot to be occupied by not more than eight (8) individuals;

(c) the obligation to provide and maintain the easements described in Article VI below;

(d) the obligation to use all reasonable means to prevent blocking or otherwise obstructing the use and enjoyment of the easements created by this Declaration and the rights granted herein;

(e) the obligation to keep all Improvements on each Owner's Lot continuously in a first-class state of repair and cleanliness, and to continuously perform maintenance, repairs and

replacements to ensure a first-class condition and state of repair of all Improvements to the Owner's Lot; and

(f) the obligation to abide by all rules and regulations adopted from time to time by the Association.

ARTICLE VI

EASEMENTS

6.1 Creation. The following easements are created by this Declaration for the benefit of the Association, each Owner and each Owner's heirs, successors, assigns, tenants, guests, invitees, agents and employees:

(a) perpetual, non-exclusive easements of ingress and egress to, through and over the areas designated on the Plat as "Ingress/Egress Easement." and any other driveways, entrance, exit and access ways installed (or to be installed) on the Property that are designed and constructed to provide access between the Lots and access to and from the Lots and public streets;

(b) perpetual, non-exclusive easements of access to, in and over such portions of an adjoining Lot or Improvements thereon, as may be reasonably necessary for construction or maintenance of Improvements on the Lot benefited thereby. Any costs or damages to the Lot on which the easement is imposed shall be paid by the Owner of the Lot benefited thereby;

(c) perpetual, non-exclusive easements upon, through, under, above and across all areas designated on the Plat as "Utility Easement," "Power & Communication Easement," "Public Sanitary Sewer Easement" and "Drainage Easement" for the installation, maintenance, repair, operation, removal and replacement of lines, pipes, wires, equipment, fittings, connections and related facilities and fixtures as necessary to provide drainage, sanitary sewer, power, communications and other utility services (including electricity, domestic and fire service water, gas, telephone and other communication services, cable TV services, internet access services, heating, ventilating, air conditioning, security services, drainage and sanitary sewer, trash collection and removal and any other services to the Property similar to the foregoing);

(d) perpetual, non-exclusive easements upon, through, under, above and across each Lot for the installation, construction, maintenance, repair, removal and replacement of foundations, footings, walls, floor slabs and other structural components and supports as are reasonably necessary in connection with the construction of the buildings and related Improvements to be located on the Property. Any costs or damages to the Lot on which the easement is imposed caused by the maintenance, repair, removal or replacement of such structural components and supports shall be paid by the Owner of the Lot benefited thereby. The design, configuration, location and manner of installation, maintenance and repair of such foundations, footings, walls, floor slabs and other structural components and supports to be located on the Property shall be subject to the prior review and approval of the Declarant for so long as the Declarant owns a Lot and thereafter shall be subject to the prior review and approval of the Association; and

(e) perpetual, non-exclusive easements over the Property for the installation and maintenance of traffic and other signs of general benefit to the Property and the Owners and their respective heirs, successors, assigns, tenants, guests, invitees, agents and employees.

By receiving title to a Lot, each Owner acknowledges and agrees that the locations of all easements depicted on the Plat, including the "Ingress/Egress Easements," "Utility Easements," "Power & Communication Easements," "Public Sanitary Sewer Easements" and "Drainage Easements" are approximations and that the actual location of those easements upon completion of construction of the Improvements to the Property may differ in minor respects from the locations depicted on the Plat.

6.2 Terms of Easements. The easements created by this Article VI are perpetual and shall remain in full force and effect, notwithstanding the revocation or termination of this Declaration or the dissolution of the Association, until and unless revoked or amended in writing by all Owners and recorded in the Register's Office of Hamilton County, Tennessee.

6.3 Additional Easements; Maintenance of Easements. In the event Declarant or its successors and assigns hereunder arrange for the dedication of any utility lines and easements to the appropriate utility company, applicable governmental authority or other provider, and such dedication is reasonably necessary in connection with the use and operation of the Lots to be served thereby, the Owners of those Lots shall dedicate and grant such easements upon and across the Lots as shall be reasonably required by such utility company, governmental authority or other provider and in such form of easement as Declarant or its successors and assigns may reasonably require. To the extent any utility lines and/or equipment installed and located on the Property (e.g., HVAC equipment) serve more than one Lot, the costs of maintaining and repairing such common lines and/or equipment shall be paid by the Association and charged to the Owners of those Lots based on the amount of each benefited Owner's individual use of such facilities relative to the total use thereof by all benefited Owners thereof. The Association shall reasonably determine the appropriate allocation of such repair and maintenance costs to and among the benefited Owners.

6.4 Easements Run with the Land. The easements herein created shall be effective as of the date hereof, and shall run with the land and constitute an appurtenant benefit to the Lots and a servitude upon the Property, except that the common footings, foundation and structural easements provided in Subsection 6.1 (c) and (d) above shall constitute mutual and reciprocal appurtenant benefits to and servitudes upon each of the Lots and the Property in accordance with their terms.

6.5 No Public Dedication. This instrument is not intended, and it shall not be construed, to dedicate any easements to the general public.

6.6 No Unreasonable Interference. The easement rights and benefits granted and created hereunder shall be exercised by the beneficiaries thereof in such a manner as to avoid unreasonable interference with the normal use, operating and enjoyment of the burdened tenement, consistent with the intent of this Declaration.

ARTICLE VII

INSURANCE AND CASUALTY DAMAGE

7.1 Requirement of Insurance. It is agreed that each Lot, including the Improvements thereon, shall be insured by its Owner against such risks and in such amounts as are reasonably determined by the Association, including property coverage and public liability coverage. Certificates of Insurance shall be delivered to the Association by each Owner promptly upon becoming an Owner and prior to the expiration of any certificate.

7.2 Repair. The right is given to the Association to require the Owner of a Lot with damage which renders the Lot or Improvements thereon untenable, within sixty (60) days from the event which caused the damage or loss ("Causing Event"), or within sixty (60) days of the settlement of any insurance, liability or condemnation claim, if later and if the claim is promptly made and diligently pursued by Owner, but in no event more than nine (9) months after the Causing Event either (i) to make repairs or replacement to restore the Lot or Improvements substantially to the condition existing prior to the Causing Event (if condemnation is the Causing Event, as near as reasonably possible to the condition existing prior to the Causing Event), or (ii) to raze the Improvements (excluding undamaged plantings and excluding all drives or apparatus reasonably needed by or benefiting other Lots), while taking such action as may be necessary to prevent damage to the Property, and plant or landscape the Lot (including the razed area) in keeping with plantings and landscaping on other parts of the Property.

7.3 Association Action Following Failure by Owner to Repair or Raze. If a Lot is not restored or if the Improvements on a Lot are not razed and re-planted and re-landscaped in accordance with Section 7.2 above within nine (9) months from the Causing Event, the Association may perform the obligations of the Owner of the damaged Lot and have a lien on the Lot for payment of its expenses.

ARTICLE VIII

THE ASSOCIATION

8.1 Membership. Every Owner of a Lot included within the Property shall be a member of the Association and shall be entitled to attend, participate and vote (if not delinquent in paying assessments) in all meetings of the Association. The foregoing is not intended to include persons or entities who hold an ownership interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

8.2 Voting Rights. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned, except that the Declarant shall have a total of twenty-seven (27) votes (regardless of the number of Lots owned by the Declarant) for so long as the Declarant owns a Lot. When more than one person holds an interest in any Lot, all such persons shall constitute one Owner and the vote for such Lot shall be exercised as the Owners of such Lot determine. All decisions of the Association, except as otherwise provided herein, shall be decided by a Majority in Interest represented at any meeting at which a quorum is in attendance.

8.3 Purpose. The purpose of the Association is to carry out the terms of the Declaration, to adopt such rules and regulations as may be appropriate, to set and collect assessments, and to do and perform any and all other things, matters, or acts required by or permitted by the Owners or the laws of the State of Tennessee which are necessary and desirable to carry out the purposes and intentions expressed herein.

8.4 Initial Meeting. The initial meeting of the Association shall be held within ninety (90) days of the recording hereof in the Register's Office of Hamilton County, Tennessee, at a time and at a place in Hamilton County, Tennessee designated by Declarant. At the initial meeting a budget and assessment shall be determined for the period of time between the initial meeting and the first annual meeting.

8.5 Annual Meetings. The annual meeting of the Association shall be held at two o'clock P.M. on the first Tuesday in May of each year in Hamilton County, Tennessee, unless agreed otherwise by a Majority In Interest, for the purpose of adopting a budget and determining an assessment for the

following year, and of transacting any other business authorized to be transacted; provided, however, that if such day is a legal holiday, then the meeting shall be held at the same hour on the next following business day.

8.6 Special Meetings. Special meetings of the Association shall be held whenever called by the Chairman or by the written request of any of five (5) or more of the Owners. When a special meeting is so called, the Chairman shall mail or deliver not less than ten (10) days' written notice of the meeting to all Owners.

8.7 Quorum. At any annual or special meeting, the presence at the meeting of Owners having the right to cast at least a Majority in Interest are entitled shall constitute a quorum. If the required quorum is not present at any meeting, an adjourned meeting may be called, subject to the notice requirements set forth herein. No such adjourned meeting shall be held more than thirty (30) days following the preceding meeting.

8.8 Presiding Officer. The Chairman shall preside over all Association meetings, and shall be responsible for taking and keeping the Minutes of all Association meetings. The Chairman shall be elected by the Owners and shall serve until a successor is elected.

8.9 Duties and Powers of the Association. In addition to the rights, powers and duties conferred upon the Association by the Declaration and the laws of Tennessee, and without in anywise limiting the same, the Association shall have the following additional and cumulative rights, powers and duties:

- (a) to hold title and possession to funds and property, including the maintenance funds and other assessments, and including title to any part of the Property, as trustee for the use and benefit of the Owners;
- (b) to make and collect maintenance fund assessments against Owners to defray the costs of the Association, including, without limitation, all costs and expenses of carrying out the provisions of the Declaration, and of engaging all necessary services and employees therefor;
- (c) to use the proceeds of assessments in the exercise of its powers and duties;
- (d) to oversee the maintenance, repair, replacement, operation and administration of the Property, as provided herein, and other matters covered by the Declaration;
- (e) to make and amend reasonable regulations for the use of the Property;
- (f) to enforce the provisions of the Declaration and the rules and regulations for the use of the Property;
- (g) to contract for the management of the Association and to delegate to a manager the management duties of the Association, to be performed by such manager under the supervision of the Association;
- (h) to carry insurance for the protection of Owners against casualty and liabilities;
- (i) to pay the cost of any power, water, sewer and other utility services rendered to the Association and not billed to individual Lots;

(j) to employ personnel to perform the services required for proper administration of the Association, including, without limitation, auditors, attorneys, bookkeepers and managers;

(k) to deposit all monies and funds of the Association in such bank or banks as may be designated from time to time. Withdrawals of monies from such accounts in banks shall be only by checks or drafts signed by such persons as are authorized by the Association;

(l) to obtain an audit of the accounts and books of the Association to be made annually by a certified public accountant, and to furnish a copy of the report to each Owner not later than February 28 of the following year; and

(m) to require fidelity bonds for all employees handling or responsible for funds of the Association. The amount of such bond or bonds shall be determined by the Association but shall be at least in the amount of the total annual regular assessments. Premiums on such bonds shall be paid as an expense of the Association.

8.10 Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Association, subject to any provisions of the statutes of the State of Tennessee and provisions of the Declaration.

ARTICLE IX

NOTICE AND CURE

9.1 Place for Notice. All notices, demands and other communications under or in connection with this Declaration shall be in writing and shall be deemed properly delivered, given and received (a) if delivered personally, upon delivery, (b) if delivered by registered or certified mail (return receipt requested) from the United States, upon the earlier of actual delivery or three business days after being mailed, (c) if sent by overnight delivery by a recognized overnight delivery service for overnight delivery, upon the earlier of actual delivery or one business day after being sent, or (d) if given by facsimile, upon confirmation of transmission by facsimile (or, if such confirmation does not occur during normal business hours on a business day, then on the next business day), at the address of the Lot, in the case of an Owner, and at the address of the Declarant shown on the signature page of this Declaration in the case of the Declarant. Any such address, or its replacements, may be changed by the addressee by written notice to all other parties, and shall not require the consent of any other party or an amendment to this Declaration.

9.2 Right to Cure. All notices required or permitted under this Declaration because of a default in an obligation by an Owner shall include a right for the Owner to cure the default which has prompted the notice. In the event of a monetary default, the notice shall provide ten (10) days to cure, and in the event of a nonmonetary default, the notice shall provide thirty (30) days to cure except for a default which cannot reasonably be cured within such period, in which case the notice shall require that efforts to cure be begun within thirty (30) days and be diligently pursued to completion.

9.3 Notice to Mortgagees. Any notice required by this Declaration to be given to an Owner prior to an action being taken involving that Owner or that Owner's Lot shall also be given to parties holding a recorded mortgage on that Lot, at the address furnished by the Lot Owner or mortgagee. The notice to a mortgagee shall be given in the same manner as notice to the Owner, and shall be given simultaneously with the notice to the Owner. The notice to a mortgagee shall provide (i) that if an Owner which has committed a monetary default has not cured the default within the permitted time, the mortgagee will be given an additional ten (10) days to cure such monetary default, and (ii) that if an Owner which has committed a nonmonetary default is not in compliance with the terms of notice to it at

the end of the permitted time, no action will be taken by the Association until after the passage of an additional period of time reasonably sufficient for the mortgagee to acquire title to the Lot by foreclosure and to comply with the terms of the notice to Owner. Notice shall not have been accomplished unless the provisions of this section are satisfied.

ARTICLE X

GENERAL PROVISIONS

10.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, reservations, easements, liens and charges now or hereafter granted or imposed under this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

10.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions, which shall remain in full force and effect. In the event that any provision hereof shall be declared void by a court of competent jurisdiction by reason of the period of time for which the same shall be effective, then the term of such provisions shall be reduced by the maximum period of time allowed by the laws of the State of Tennessee.

10.3 Enforcement. In addition to any other rights available by law, the Association and any Owner shall have the right to prosecute any proceedings at law or in equity against any person or persons for the breach or violation of any of the provisions of this Declaration and to obtain relief by way of injunction, money damages, or both.

10.4 Amendment. The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of, and be enforceable by, the Association and the Owner of any Lot, their successors and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time said covenants shall be extended for successive periods of ten (10) years each unless other action is taken by the Association. This Declaration, including the exhibits hereto, may be amended by a recorded instrument executed by Owners who hold at least sixty-seven percent (67%) of the total votes to which members of the Association are entitled; provided, however, that an amendment which affects the voting rights or assessments of a Lot shall require the approval of all Owners.

10.5 Binding Effect. All provisions, conditions, restrictions, options, benefits and burdens contained in this Declaration shall run with and bind the Property and shall inure to the benefit of, and shall be enforceable by Declarant, the Association, or any Owner, their respective legal representatives, heirs, successors, and assigns. The rights and/or obligations of Declarant as set forth herein shall inure to the benefit of and be binding upon any successor, designee or assignee of Declarant or, with consent of Declarant, any transferee of the then unsold Units to the extent the transferee holds the unsold Units for resale. Subject to the foregoing, Declarant shall have the right at any time, in its sole discretion, to assign or otherwise transfer its interest herein whether by merger, consolidation, lease, sublease, assignment or otherwise.

10.6 Tennessee Law. This Declaration shall be a Tennessee contract and shall be construed under the laws of the State of Tennessee.

10.7 Interpretation. The captions of the various articles, sections and paragraphs of this Declaration are for convenience of use and reference only and do not define, limit, augment, or describe the scope, content or intent of this Declaration or any parts of this Declaration. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a legal entity when the context so requires. The single number includes the plural whenever the context so requires. The term "including" shall be construed as "including, without limitation,".

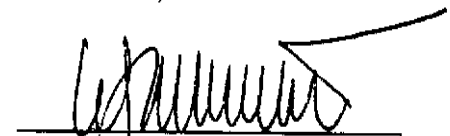
10.8 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall be reduced to the maximum period of time allowed by law.

10.9 Attorneys' Fees. Should Declarant, Association or any Owner employ counsel in order to enforce any of the foregoing covenants, conditions, reservations, restrictions or obligations, all costs incurred in such enforcement, including reasonable attorneys' fees, shall be paid by the Owner found to be in violation by a court of competent jurisdiction. This cost may be assessed against the Lot of the defaulting Owner as an assessment.

10.10 No Waiver. No delay or omission on the part of the Declarant, any Owner or the Association in exercising any right, power or remedy herein provided for in the event of any breach of the covenants, conditions, restrictions and obligations herein contained shall be construed as a waiver thereof or acquiescence therein. No right of action shall accrue, nor shall any action be brought or maintained by any Owner against the Declarant or the Association for or on account of its failure to bring an action on account of any breach of the Declaration, nor for imposing covenants, conditions and restrictions which may be found or determined to be unenforceable at law.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed as of this 22 day of September, 2005.

CHERRY STREET, LLC

By: 
W. P. Sudderth, Chief Manager

Address:

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

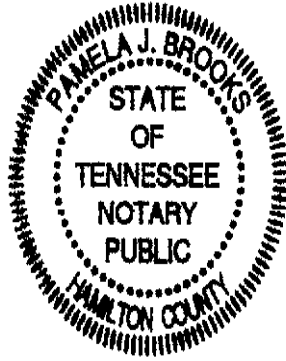
Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared W. P. SUDDERTH, with whom I am personally acquainted, and who upon oath, acknowledged himself to be the Chief Manager of CHERRY STREET, LLC the within named bargainor, a limited liability company, and that he as such Chief Manager being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as such Chief Manager.

WITNESS my hand and Notarial Seal at office this 22 day of Sept, 2005

Pamela J. Brooks
Notary Public

My Commission Expires:

June 21, 2008



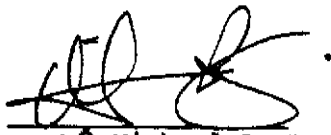
JOINDER

SunTrust Bank holds the following deeds of trust and other security instruments applicable to the Property (collectively, the "Instruments"):

- Tennessee Deed of Trust and Security Agreement recorded in Book 7346, Page 37 in the Register's Office of Hamilton County, Tennessee;
- Tennessee Deed of Trust and Security Agreement recorded in Book 7217, Page 615 in the Register's Office of Hamilton County, Tennessee; and
- Assignment of Lessor's Interest in Leases recorded in Book 7346, Page 45 in the Register's Office of Hamilton County, Tennessee;

SunTrust Bank joins herein for the purpose of submitting the Property to the Declaration. All liens of said Instruments shall remain prior and superior to any liens created under the Declaration.

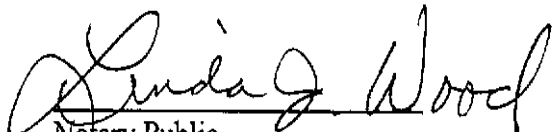
SUNTRUST BANK

By: 
 Title: VP Michael L. Rouse
 Vice President

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

Before me, a Notary Public, in and for said State and County, duly commissioned and qualified, personally appeared Michael L. Rouse, with whom I am personally acquainted, and who upon oath, acknowledged [himself, herself] to be the Vice Pres. of SUNTRUST BANK, the within named bargainor, a corporation, and that [he, she] as such Vice Pres., being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by [himself, herself] as such Vice President

WITNESS my hand and Notarial Seal at office this 20th day of Sept., 2005


 Notary Public

My Commission Expires: 10-06-07

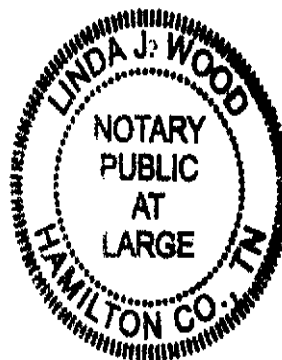


EXHIBIT A

PLAT

**[See Plat of Record in Plat Book 79, Page 27 in the Register's Office of Hamilton County,
Tennessee]**

EXHIBIT B

PROPERTY DESCRIPTION

Tract 1:

The South 60 feet of the East 121.5 feet of Lot Eight (8), and the North 60 feet of the East 121.5 feet of Lot Ten (10), and the South 40 feet of the East 123 feet of Lot Ten (10), Original Plan of the Town of Chattanooga, the same all together form one contiguous tract of land more particularly described as follows: To locate the point of beginning, begin at the intersection of the South line of East Second Street with the West line of Cherry Street, and then go Southwardly, with and along the West line of Cherry Street, 50 feet to the point of beginning; thence continue Southwardly, with and along the West line of Cherry Street, 160 feet; thence Westwardly, parallel to the South line of Second Street, 123 feet; thence Northwardly, parallel with the West line of Cherry Street 40 feet; thence Eastwardly, parallel with the South line of East Second Street, 1.5 feet; thence Northwardly, parallel with the West line of Cherry Street, 120 feet; thence Eastwardly, parallel with the South line of East Second Street, 121.5 feet to the point of beginning.

Tract 2:

Being the East one hundred thirty-three (133) feet of Lot Fourteen (14), Original Town Market Street. Said lot fronts 133 feet on the Northern line of Third (3rd) Street, and extends Northwardly, between parallel lines, 110 feet to the South line of Lot 12 of said subdivision, its Eastern line also being the West line of Cherry Street. SUBJECT TO Right-of-Way and Construction Easement recorded in Book 6340, Page 298 in the Register's Office of Hamilton County, Tennessee.

Tract 3:

The East one hundred twenty-three (123) feet of the South one-half (1/2) of Lot Twelve (12), Market Street, Original Plan of the Town of Chattanooga. Said part of lot fronts 50 feet on the West line of Cherry Street, and extends back Westwardly, between parallel lines, 123 feet to the East line of the West part of the South one-half (1/2) of Lot 12.

Tract 4:

The North one-half (1/2) of the East one-half (1/2) of Lot No. Twelve (12), Market Street, Original Plan of the Town of Chattanooga, in Hamilton County, Tennessee; said part of lot makes one lot fronting 50 feet on the West line of Cherry Street and extending back Westwardly of uniform width 121-1/2 feet, or halfway to Market Street; and being the same property conveyed to the Home Owners' Loan Corporation by Trustee's Deed from Benjamin L. Cash, Substitute Trustee, dated September 10, 1940, and recorded in Book 804, Page 245, in the Register's Office of Hamilton County, Tennessee.

All Tracts are SUBJECT TO taxes for the year 2005 and subsequent years.

All Tracts are SUBJECT TO governmental zoning and subdivision ordinances or regulations in effect thereon and to any covenant, easement, restriction or document recorded in the public records.

Reference for prior title is made to Special Warranty Deed recorded in Book 7217, Page 609 in the Register's Office of Hamilton County, Tennessee. The legal descriptions set forth hereinabove are identical to the legal descriptions in the prior deeds.